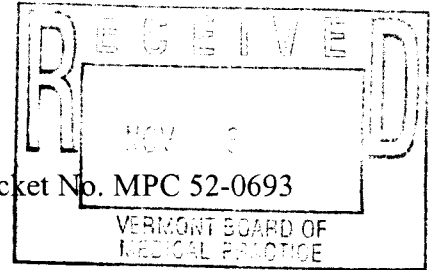


**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**



In re: Lawrence S. Krain, M.D.

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Docket No. MPC 52-0693

BOARD HEARING COMMITTEE:

Katherine M. Ready, Public Member
Patricia A. King, M.D., Ph.D.

PRESIDING OFFICER:

Phillip J. Cykon, Esq.

APPEARANCES:

James S. Arisman, Esq., Assistant Attorney General,
For State of Vermont, Petitioner
Lawrence S. Krain, M.D., Respondent (did not appear)

HEARING HELD:

September 29, 2003

HEARING COMMITTEE REPORT

INTRODUCTION

On September 29, 2003, the Vermont Board of Medical Practice Hearing Committee (Committee) held a hearing on the Amended Specification of Charges dated August 6, 2003, and filed by the Attorney General's Office against Lawrence S. Krain, M.D. (Respondent). Respondent did not appear and was not represented by counsel.

During the hearing, the State presented documentary evidence. Having heard evidence on the allegations, the Committee hereby reports its findings of fact and conclusions of law to the Board pursuant to 26 V.S.A. § 1355(b).

FINDINGS OF FACT

1. Lawrence S. Krain, M.D., (Respondent) holds Vermont Medical License Number 042-0003386, issued on January 20, 1967. Respondent held an unencumbered license to practice medicine in the State of Vermont until November 30, 1994, at which time this license lapsed and was not renewed.
2. The State of Vermont in 1995 filed a Specification of Charges alleging that Respondent Krain answered falsely and failed to disclose on his 1988 and 1992 Vermont medical license renewal applications that he had been convicted in California of felony solicitation of subornation of perjury.
3. The State's Specification of Charges also alleged that Respondent answered falsely and failed to disclose in his 1992 Vermont medical license renewal application that disciplinary charges were

then pending against him before the State of Illinois Department of Professional Regulation for having failed to disclose there that he had been convicted of a felony in the State of California.

4. The Vermont Board of Medical Practice renewed Respondent's medical license in 1988 and in 1992 based at least in part on the false representations made by Respondent in his applications in Vermont for renewal of his medical license. The Committee takes official or judicial notice of the facts contained in the license applications submitted by Respondent.

5. The hearing on the State of Vermont's charges against Respondent was continued by agreement of the parties until all appeals by Respondent of disciplinary actions against him in other states had been completed. All such appeals by Respondent now have been completed, and all disciplinary actions taken against Respondent in sister states have been affirmed.

6. On August 18, 2003, the Board Administrative Office sent a notice of the hearing on the Amended Specification of Charges to Respondent's last known address. Respondent did not contact the Board Administrative Office or the Attorney General's Office concerning the hearing date. Physicians are required by Board Rule to notify the Board within 10 days of any change of address.

7. Respondent did not appear at the hearing held on September 29, 2003.

California Revocation.

8. Respondent Krain was convicted on October 23, 1987 in California following his plea of guilty to felony charges of solicitation of subornation of perjury. Although Respondent's guilty plea and conviction were subsequently set aside pursuant to a specific California statute, Respondent was not relieved of his obligation to truthfully disclose the conviction on any application for licensure by any state agency. The Medical Board of California filed disciplinary charges against him.

9. Following protracted litigation and appeals, Respondent's medical license was revoked by the Medical Board of California by order dated on or about October 23, 1996 based on (1) his conviction; and (2) other disciplinary action that earlier had been taken against him in the State of Illinois. The California Board found the offense of conviction was "one . . . of moral turpitude and, as it has as its hallmark a basic act of dishonesty, it is also substantially related to the functions and qualifications of a medical doctor." The revocation of Respondent's California medical license became final on or about May 10, 1999. See State's Exhibit 1 (certified order).

Illinois: Indefinite Suspension.

10. The Illinois Department of Professional Regulation on March 22, 1993 indefinitely suspended Respondent's license to practice medicine in that State based on his felony conviction in the State of California. The Illinois suspension has remained in effect continuously since that date. The Illinois order also included a determination that due to disease or disability Respondent was unable to practice medicine with reasonable skill and safety. See State's Exhibit 2 (certified order).

Ohio: Indefinite Suspension.

11. The State Medical Board of Ohio on July 2, 1997 determined that Respondent Krain had engaged in unprofessional conduct by failing to acknowledge on three separate Ohio renewal applications in 1988, 1990, and 1992 his felony conviction in the State of California and the discipline of his license by the State of Illinois. The State of Ohio entered an indefinite order of suspension of Respondent's medical license that became final following appeals on August 17, 1999. See State's Exhibit 3 (certified order).

New York: Revocation.

12. The State of New York Department of Health, by order dated November 18, 1999, revoked Respondent's license to practice medicine in that State based on his misconduct in another state, revocation and suspensions of his license in other jurisdictions, moral unfitness, practicing medicine fraudulently, and willfully filing a false report. The New York order concluded that Respondent Krain in 1988, 1992, and 1994 had provided false information on license renewal applications in that State. See State's Exhibit 4 (certified order).

Continuation of Vermont Hearing During Out-of-State Appeals.

13. Respondent contested the disciplinary actions in California, Illinois, Ohio, and New York against his medical license through a lengthy series of hearings and/or appeals in those jurisdictions. As a result of the uncertainty related to these legal actions the State of Vermont and Respondent agreed on September 25, 1995 to a continuation of the hearing on the Vermont charges against Respondent until the appeals in other States had become final.

14. All disciplinary actions against Respondent Krain in California, Illinois, Ohio, and New York have now become final. See, e.g., Krain v. Department of Professional Regulation, 291 Ill. App.3d 988, 225 Ill. Dec. 835, 684 N.E.2d 826, *reh'g denied*; 176 Ill.3d 575, 229 Ill. Dec. 54, 690 N.E.2d 1381, *petition denied* (cases consolidated), *cert. denied*, 118 S.Ct. 2345 (1998); and see Krain v. Medical Board of California, 71 Cal. App. 4th 1416, *appeal dismissed, reh'g denied* (1999); Krain v. State Med. Bd. of Ohio, 85 Ohio St. 3d 1425, 707 N.E. 2d 515 (1999).

15. The charges originally filed against Respondent by the State of Vermont had remained pending. No final action had ever been taken with regard to Respondent's medical license in this State. The State amended its original charges against Respondent and additionally charged him with unprofessional conduct based on the revocation or suspension of his medical license in California, Illinois, Ohio, and New York.

Vermont Applications.

16. On or about December 13, 1988, Respondent executed his renewal application for his license to practice medicine in Vermont. On that application, Respondent falsely answered "no" to the question, "During the previous 2 years, have you...had any convictions other than for

minor traffic violations”? Respondent’s answer was false in light of his conviction in California on October 23, 1987 on felony charges of solicitation of subornation of perjury under California Penal Code, § 653f(a).

17. On October 1, 1992, Respondent executed his renewal application for his license to practice medicine in Vermont. By this application, Respondent certified that, “all information contained in this renewal application...is true and accurate to the best of my knowledge.” On the application, Respondent falsely answered “no” to the question, “Have you, at any time, been a defendant in any criminal proceeding other than minor traffic offenses?”

18. On May 30, 1990, the Illinois Department of Professional Regulation filed disciplinary charges against Respondent for failing to disclose that he had been convicted earlier in California of a felony. Notwithstanding the existence of the pending Illinois disciplinary charges, Respondent on October 1, 1992 signed his Vermont license renewal application and falsely answered “no” to the question, “Are any formal disciplinary charges pending or has any disciplinary action ever been taken against you by any governmental authority...?”

CONCLUSIONS OF LAW

A. The Board sent notice of the September 29, 2003 hearing to the last known address of Respondent. It is Respondent’s responsibility to ensure that the Board has his current address. See Board Rule 4.2. Since Respondent apparently resides outside the State of Vermont, personal service in Vermont was not feasible. The Hearing Committee proceeded with the hearing and received evidence concerning the Amended Specification of Charges despite Respondent’s failure to appear. By failing to appear, Respondent waived his right to be present at the hearing. See Stevens v. Hill, 74 Vt. 164 (1902). See also Silverstein v. Minkin, 49 N.Y.2d 260, 263, 401 N.E.2d 210 (1980).

Count 1.

B. Based at least in part on the content of Respondent’s 1988 application for license renewal, the Vermont Board issued a license renewal for the period of February 1, 1989 to November 30, 1990. Respondent provided a false answer in 1988 on his Vermont license renewal application and by this action “fraudulent[ly] procur[ed]...a license.” 26 V.S.A. § 1354(1).

Count 2.

C. By his actions, with regard to his false answer on his license renewal application in 1988, Respondent also “deceptive[ly] procur[ed]...a license.” 26 V.S.A. § 1354(1).

Count 3.

D. Based at least in part upon Respondent’s 1992 application for license renewal, the Vermont Board issued a license for the period of December 1, 1992 to November 30, 1994. As found above,

Respondent answered falsely on his 1992 on his license renewal application and by that action Respondent “fraudulent[ly] procur[ed]...a license.” 26 V.S.A. § 1354(1).

Count 4.

E. By his actions, as found above, with regard to his false answer on his license renewal application in 1992, Respondent “deceptive[ly] procur[ed]...a license.” 26 V.S.A. § 1354(1).

Count 5.

F. The State of California revoked Respondent’s medical license in 1996 in part on grounds of that Respondent had pled guilty to criminal subornation of perjury and that such conduct was substantially related to the practice of medicine. By virtue of such revocation, Respondent Krain engaged in unprofessional conduct as then set forth in 26 V.S.A. § 1354(23); and see 26 V.S.A. § 1354(3) (criminal conviction related to practice of medicine).

Count 6.

G. The Illinois Department of Professional Regulation indefinitely suspended in 1993 Respondent's license to practice medicine based both on his felony conviction in the State of California and professional incompetence due to physical or mental impairment. Respondent Krain thereby engaged in unprofessional conduct as set forth in 26 V.S.A. § 1366 in that he was suspended from the practice of medicine in another jurisdiction on grounds for which a licensee may be disciplined under 26 V.S.A. § 1354. See 26 V.S.A. § 1354(20) (professional incompetency); 26 V.S.A. § 1354(3) (criminal conviction related to practice of medicine).

Count 7.

H. The State Medical Board of Ohio entered in 1999 a final order of indefinite suspension of Respondent’s medical license on grounds that he intentionally provided false information to that Board by failing to acknowledge on three separate Ohio renewal applications in 1988, 1990, and 1992 his conviction in the State of California and the discipline of his license by the State of Illinois. By virtue of such license suspension by the State of Ohio Respondent Krain has engaged in unprofessional conduct as set forth in 26 V.S.A. § 1366 in that he has been suspended from the practice of medicine in another jurisdiction on grounds for which a licensee may be disciplined under 26 V.S.A. § 1354. See 26 V.S.A. § 1354(1) (fraudulent or deceptive procuring of a license).

Count 8.

I. The State of New York Department of Health, Office of Professional Medical Conduct revoked in 1999 Respondent’s medical license on grounds that the conduct underlying Respondent’s original plea of guilty in California to charges of subornation of perjury evidenced

moral unfitness to practice medicine. By virtue of such revocation, Respondent Krain engaged in unprofessional conduct as set forth in 26 V.S.A. § 1354(a)(23). See 26 V.S.A. § 1354(7) (unfitness to practice medicine).

Count 9.

J. The State of New York Department of Health, Office of Professional Medical Conduct revoked Respondent's medical license on grounds that the conduct underlying Respondent's suspension of his medical license in Illinois constituted professional misconduct by practicing medicine while impaired by a mental disability. By virtue of such revocation, Respondent Krain has engaged in unprofessional conduct as set forth in 26 V.S.A. § 1354(23). See 26 V.S.A. § 1354(20) (professional incompetency due to physical or mental impairment).

Count 10.

K. The State of New York Department of Health, Office of Professional Medical Conduct revoked Respondent's medical license on grounds that included a finding that he knowingly, willfully, and with intent to deceive, provided false answers on his 1988, 1992, and 1994 New York registration applications. By virtue of such revocation, Respondent Krain engaged in unprofessional conduct as set forth in 26 V.S.A. § 1354(23). And see 26 V.S.A. § 1354(1) (fraudulent or deceptive procuring or use of a license).

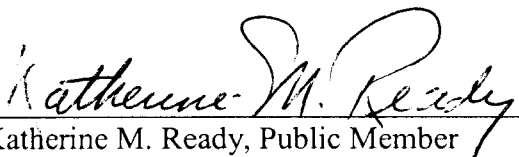
Count 11.

L. Respondent was convicted in the Superior Court of the State of California on or about October 23, 1987 following his plea of guilty to felony charges of solicitation of subornation of perjury under California Penal Code, § 653f(a). See Exhibit 5 (certified judgment of conviction). By virtue of such conviction, Respondent Krain engaged in unprofessional conduct as set forth in 26 V.S.A. § 1354(3) (conviction of a felony, whether or not related to the practice of medicine).

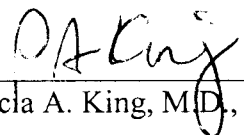
PROPOSED DECISION

Based upon the Hearing Committee's determination that Respondent has committed unprofessional conduct, the Committee proposes that the Board **REVOKE** Respondent's license to practice medicine and order that Respondent shall not apply for reinstatement within five years of the date of entry shown below.

THE BOARD HEARING COMMITTEE:


Katherine M. Ready, Public Member

10/31/03
Date


Patricia A. King, M.D., Ph.D.

11/5/03
Date

Filed with Board Office:

11/5/03
Date

Date of Entry: 11/5/03